

RULES AND REGULATIONS RELATED TO PUBLIC ACCESS TO CRIMINAL JUSTICE RECORDS

ARVADA MUNICIPAL COURT

1.0 Purpose.

The purpose of these rules and regulations is to provide a framework for public access to criminal justice records that are made, maintained, or kept by the Arvada Municipal Court (Court). These rules and regulations provide for access in a manner that enhances the timely and orderly access to criminal justice records, promotes judicial accountability, protects individual privacy rights and interests, makes effective use of Court staff and resources, promotes efficient customer service, and does not unduly burden the ongoing business of the Court. These rules and regulations are intended to provide information to those who request criminal justice records from the Court, and to provide direction to those who fulfill these requests by searching for, retrieving, downloading, redacting, editing, or copying these records. They are also intended to provide guidance to those who assist in fulfilling these requests by reviewing the records and engaging in research to determine whether a record or portion thereof is available for release pursuant to statute or case law.

2.0 Scope.

These rules and regulations apply to the production by the custodian of all criminal justice records made, maintained, or kept by the Court for use in the functions required or authorized by law or administrative rule, except that they do not apply to the production of records for other criminal justice agencies or for other governmental agencies which assist the Court in providing services to defendants seen by the Court. In addition, these rules and regulations do not apply to the party to a Court case, to the parent or guardian of a party to a Court case (in the case of a juvenile defendant), or to the party's lawyer regarding access to the Court record in the party's specific case.

3.0 Definitions.

- 3.1 The definitions set forth in the Colorado Criminal Justice Records Act (CCJRA) are incorporated by reference into these rules and regulations. The Court Administrator is the official custodian of Court records.
- 3.2 *Applicant* means an individual, association, business, or organization requesting a criminal justice record. It includes any member of the media or a media outlet.
- 3.3 *Schedule* means the Court Administrative Fees Schedule in effect on the day a request for a criminal justice record was received by the Court.
- 3.3 *Task* or *tasks* means any reasonably necessary activity, service, or work performed by a City employee or contractor that is associated with producing a criminal justice record,

including but not limited to searching for, retrieving, downloading, reviewing, redacting, editing, copying, or storing a criminal justice record as a result of a request for a record. It also includes any legal review or analysis reasonably necessary to review a request or records provided pursuant to a request. It also includes work necessary to draft an initial, interim, or other response to a request for a record.

4.0 Authority.

4.1 *Compliance with applicable law.* The release of criminal justice records must comply with the CCJRA, the Colorado Children's Code, and other statutes that affect the production of criminal justice records. According to C.R.S. §24-72-304(1), the custodian may make such rules and regulations with reference to the inspection of criminal justice records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his or her office.

4.2 *Authority.* These rules and regulations, made pursuant to Arvada City Code §58-1 and C.R.S. §24-72-304(1), are promulgated in consideration of a variety of facts and circumstances, including but not limited to applicable records laws and court decisions, the number of records requests that are made to the Court, the amount of resources that may reasonably be devoted to fulfilling records requests without unduly burdening the work of the Court, the increasing number of multiple records requests made at one time by one applicant, the increasing number of requests for voluminous numbers of records, the increasing number of requests for records spanning long periods of time, the public's interest in fulfilling records requests efficiently and effectively, and the time and costs associated with the search for, retrieval, downloading, staff and legal review of, redaction or editing (if appropriate), copying, and (in some cases), the storage of requested records.

4.3 *Context.* These rules are supplemental to, and should be read in conjunction with, the CCJRA and any applicable provisions of any other rules adopted by the Court.

4.4 *Review.* These rules will be reviewed on a regular basis, but no less frequently than every five years.

5.0 Requests for criminal justice records.

5.1 *Form.* Each request for a record must be completed on a form provided by the custodian. The form will be available on-line.

5.2 *Actions to identify requested record.* The custodian may, at any time, take any reasonable action to assist the applicant in identifying the specific record being sought, including but not limited to asking the applicant to identify with more specificity the record sought. In the case of a request for a communication from or to a City employee, the custodian may request the name or title of the party or the parties to the communication. The custodian may take this action before devoting staff time or effort

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to preparing an initial or interim response to the request, or searching for, retrieving, downloading, reviewing, redacting or editing, copying a record, or engaging in research about whether a record is available for release.

- 5.2.1 If, after making reasonable efforts, the custodian is unable to obtain the information needed to identify the specific record being sought, the custodian may notify the applicant of this and close the request.
- 5.3 *No pecuniary gain.* Each request for a record must be accompanied by a “no pecuniary gain” statement signed by the applicant.
- 6.0 **Processing criminal justice records requests.**
- 6.1 *Release.* The intent of the CCJRA is that the custodian makes available to the applicant certain criminal justice records which are in the custodian’s care or control.
 - 6.1.1 Records of official actions will be released in accordance with C.R.S. §24-72-303(1).
 - 6.1.2 Records of other than official actions may be released at the discretion of the custodian following an examination of the applicable statutes, Court decisions, and requested records as necessary.
 - 6.1.2.1 In deciding whether to release a record of an other than official record, the custodian may take into account any factor pertinent to the decision, including but not limited to the privacy interests of individuals who may be impacted by a decision to allow inspection or release of the records, the sensitive nature of certain criminal justice records, the Court’s interest in keeping confidential information confidential, the public purpose to be served in allowing inspection, and any other consideration relevant to the particular records request. See generally, *Harris v. Denver Post Corp.*, 123 P.3d 1166 (Colo. 2005). The custodian may look for guidance on records release decisions to any policy promulgated by the Colorado Judicial Department about public access court records; however, the custodian is not mandated to follow any such policy.
- 6.2 *Outside contractor.* The custodian may hire or engage an outside contractor to fulfill or review any records request.
- 6.3 *Legal review.* In any case where the custodian reasonably believes legal review or analysis of a request or of the requested record is necessary, the custodian may request a legal review of the matter. The legal review or analysis may be performed by a City attorney or by an outside attorney at the discretion of the City attorney.

- 7.0 **Costs of producing a record.**
- 7.1 *Applicant to be billed.* Every applicant will be billed for the costs of producing a record in accordance with the Schedule. If the bill is not paid within 14 days of the date of the bill, the custodian may close the request.
- 7.1.1 Recognizing that many tasks are performed in conducting a preliminary search for and staff or legal review of a record, reasonable costs relating to the preparation of an initial, interim, or other response to the applicant will be billed to the applicant if the applicant then requests that all or a portion of a requested record be provided.
- 7.2 *Estimated costs.* In any case where staff or legal review reveals that the estimated costs of production of a record is in excess of \$10.00, all estimated costs must be paid by the applicant before the record is produced. Except for a preliminary search for or review of a record necessary to provide an initial or interim response to an applicant, the search for the requested record will not begin until all estimated costs are paid.
- 7.2.1 In the event of a shortfall in the actual amount due, the applicant must pay the balance due before the requested record is produced. In the event of an overage, the custodian will refund the balance to the applicant within ten days of production of the record.
- 7.3 *Time report to custodian.* Any City employee or contracted individual who is assigned to perform a task reasonably necessary to assist in the production of a criminal justice record for an applicant will promptly report to the custodian the time spent on any such task, along with a brief description of the task completed, in order to facilitate proper billing. The report may be verbal. The applicant will be billed for time spent on these tasks in accordance with the Schedule.
- 7.3.1 Any City or contracted attorney who is assigned or engaged by the custodian or the City attorney to perform a task reasonably necessary to assist in the production of a criminal justice record for an applicant will promptly report to the custodian the time spent on any such task, along with a brief description of the task completed, in order to facilitate proper billing. The report may be verbal. The applicant will be billed for time spent on these tasks in accordance with the Schedule. Any communication between the attorney and the custodian about such a review or analysis other than time spent on it remains privileged.
- 7.4 *Refunds.* Because the costs of producing a record are incurred at the time a service is performed or at the time a material or medium is used to produce a record, the custodian will not refund any costs associated with the search for, retrieval, review, redaction or editing, copying, or other costs of producing a record, except where the custodian has clearly produced a record that was not requested by the applicant.

8.0 Miscellaneous.

- 8.1 *No unnecessary interference.* It is the custodian's duty to ensure that a response to a records request does not unnecessarily interfere with the regular functions of the Court staff.
- 8.2 *Information about records.* A request for information about records will not be considered a request for records. The Court is not obligated to manipulate existing data to fulfill a request for information or to create a new record in response to a records request. See, *Office of the State Court Administrator v. Background Information Systems*, 994 P.2d 420 (Colo. 1999). The Court will not create a new record by searching for and compiling information from its existing records upon request, unless the custodian, with the approval of the Presiding Judge of the Municipal Court, determines that it is in the Court's best interest to do so.
- 8.3 *Complex records requests.* In order to assure that a complex records request or a request for voluminous numbers of records does not overwhelm the custodian's office, the custodian may take any reasonable action to respond to such a request, as long the custodian works diligently to fulfill the request until it is completed. As an example, if a request contains more than three requests for separate records, the custodian may select and respond to any three of those requests. Once those three requests are paid for and fulfilled or otherwise closed, the custodian may then respond to another set of three requests, repeating this process as necessary until all the requests are paid for and fulfilled or otherwise closed. Should this be necessary, the custodian will notify the applicant of the status of the remaining requests no less than once per week until all of the requests are paid for and fulfilled or otherwise closed.
- 8.4 *Screening.* The custodian is not responsible for screening previous or multiple requests from an applicant in order to avoid duplication of records. In the event duplicate records are requested and provided, no refunds will be provided.
- 8.4.1 The custodian is not responsible for screening previous records requests made by other applicants to determine whether a record has been provided in the past as part of an earlier records request.
- 8.5 *Descriptive information.* Except for a brief description of a record (e.g., "AM123456," or "The record is a video of a court proceeding"), the custodian will not provide descriptive or comparative information about the content of any criminal justice record.
- 8.6 *No prior inspection.* Due to the sensitive nature of certain criminal justice records, strict rules governing the release of certain records, and because the Court does not have the staff or physical facilities to allow for the inspection of a record prior to its production, the Court does not allow for the inspection of a record by an applicant prior to production of the record.

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- 8.7 *Referral to other city custodians.* A request for a City record not in the custody of the Court will be referred as soon as reasonably practical to the appropriate custodian of that record for fulfillment. As an example, a request for a record of an email communication from or to a City employee will be referred to the City Clerk's office.
- 8.8 *Authority to respond.* In the interest of efficiency, the custodian of the requested criminal justice record may authorize any other City custodian of records to respond to a request for the record so long as the custodian of the criminal justice record determines whether and how the requested record is released or otherwise made available for inspection or determines that release or inspection is denied. The custodian may also provide an invoice of costs or estimated costs relating to the production of criminal justice records to any other City custodian of records for presentation to an applicant.
- 8.9 *Discovery.* Discovery requests will be referred to the appropriate prosecutor for fulfillment.
- 8.10 *Pickup.* Records are normally made available for pickup at the Court window. The Court will charge the applicant for costs associated with mailing or shipping records in accordance with the Schedule.
- 8.11 *Request is a criminal justice record.* A request for a criminal justice record is itself a criminal justice record which may be released upon request and as allowed by law.
- 8.12 *Posting.* These rules and regulations may be posted on the Court's website.
- 9.0 **Format of records.**
- 9.1 *Format.* A record will be provided in a format or on a medium determined by the custodian. A record may be provided in a hard copy format, on a CD, on a DVD, or in any format as determined by the custodian. The custodian may provide a copy of a scanned version of a record in response to any request for a record.
- 9.1.1 A record will not be provided in a specific format requested by the requesting party unless that format is also the format or medium the record is normally provided in.
- 9.2 *Redaction or editing.* A requested record may be provided in redacted or edited form in accordance with applicable statute and case law.
- 10.0 **Production of audio or video records.**
- 10.1 *Specificity.* Requests for production of audio or video records must be reasonably specific as to the date, time, and location the requested record was made. The custodian will not screen audio or video records for a specific "event."

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- 10.2 *Denial allowed.* In cases where City owned or operated technology does not allow for editing or otherwise manipulating audio or video recordings, (e.g. editing out or blurring images of juveniles or editing out voices of juveniles or other protected information contained in criminal justice records, etc.), the custodian may deny inspection of the entire audio or video record.
- 10.3 *Audio transcription.* Upon consultation with the applicant, the custodian may produce a transcription (redacted or not) of an audio recording.
- 10.4 *Security video recording.* The City may create, keep, or maintain video recordings of certain areas and facilities in and around City Hall or other City properties for security purposes. These recordings are not in the custody of the Court. Any request for a security video recording will be referred to the custodian of records for the Arvada Police Department.
- 10.5 *Video recording from Council chambers.* KATV is responsible for recording any court proceeding that occurs in City Council chambers. These recordings are not in the custody of the Court. Any request for a video recording of a court proceeding that occurs in chambers will be referred to the City Clerk's office.
- 10.6 *Use by applicant.* Court video and audio recordings are designed to open on a computer. The Court is not responsible if an applicant is unable to open a particular DVD or CD provided by the custodian. No refunds will be given in the event an applicant is unable to open a DVD or CD containing criminal justice records.

11.0 Requests to "preserve evidence."

A request to "preserve evidence" will be deemed to be a request for a criminal justice record and will be processed in accordance with these rules and regulations.

12.0 Denial of a records request.

The custodian may deny a request using any practical method or format, including but not limited to email. In order to reduce the costs of an initial or interim response, the custodian may deny a request by use of a check-off form or other communication indicating the reason or reasons for denial of inspection or release.

13.0 Timeliness of access.

The CCJRA, unlike the Colorado Open Records Act, does not contain a specific time frame for the production of criminal justice records. However, in most cases, the Court strives to produce a criminal justice record requested under the CCJRA within three business days of the request, or, in the alternative, an initial or interim response to the applicant with an invoice, if appropriate.

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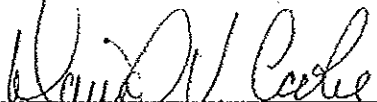
14.0 Administrative fees schedule.

Tasks associated with the production of criminal justice records can be time consuming. With this in mind, the Court will promulgate a Schedule so that the financial costs of providing a criminal justice record are borne by the applicant, and not by the taxpayer. The Schedule will set forth a list of costs for tasks or materials reasonably necessary to fulfill records requests or any other services performed by the office of the custodian. The Schedule will be updated on a regular basis, but no less frequently than every five years. In lieu of adopting its own Schedule, the Court may utilize as its Schedule the Administrative Fees Schedule adopted, and from time to time amended, by the City. The Court will post the Schedule that is adopted at the Court and on the Court's website.

These Rules and Regulations Related to Public Access to Criminal Justice Records for the Arvada Municipal Court are

ADOPTED this 1st of April, 2016

BY THE COURT:



David V. Cooke, Presiding Judge